



KERN COUNTY WASTE MANAGEMENT DEPARTMENT

Daphne B. Harley, Director
2700 "M" Street, Suite 500
Bakersfield, CA 93301-2372
(661) 862-8900
(800) 552-KERN (option 6)
Fax: (661) 862-8905
<http://www.co.kern.ca.us/wmd/>

November 27, 2006

"Via Facsimile and U.S. Mail"

Mr. Richard Castle
California Integrated Waste Management Board
1001 "I" Street
Sacramento, CA 95812

RE: Kern County Waste Management Department Comments on Proposed Changes to California Code of Regulations, Title 27, Chapter 4, Subchapter 4, §21780 – §21820

Dear Mr. Castle:

The Kern County Waste Management Department (KCWMD) appreciates the opportunity to comment on these proposed regulations as they relate to postclosure maintenance, financial assurances and corrective action plans. However, KCWMD is concerned that the review period was insufficient to allow adequate development of comments on these proposed changes. This correspondence addresses some of our basic concerns and will be followed up with more comprehensive comments during the next review period.

The following sections summarize some of our initial concerns with these proposed changes:

§21840(a)(2): CCR Title 27 already contains provisions that will continue the postclosure maintenance period beyond 30 years in the event of significant impacts from the landfill. "Post-closure Maintenance" as defined in §20164 is *"the period after closure of a waste management unit (Unit) during which the waste in the Unit could have an adverse effect on the quality of the waters of the state."*

KCWMD requests clarification as to the basis for extending the minimum time period from thirty (30) to fifty (50) years. Additionally, KCWMD requests an explanation of the methodology/rationale proposed for use in defining the point at which *"the waste no longer poses a threat to public health and safety and the environment."*

As a fiscally responsible public agency, KCWMD is not prone to defaulting on long-term financial commitments. Based on this, KCWMD believes the risk of future defaults might be more fairly distributed by developing different standards for public agencies and the private sector.

Mr. Richard Castle
California Integrated Waste Management Board

Page 2

November 27, 2006

KCWMD believes that various portions of proposed §21787 need clarification:

- The corrective action plan (CAP) has some relationship to the corrective action program (which also uses the acronym CAP) in Title 27 §20430 concerning releases from waste management units that exceed the Water Standards adopted under §20390 for the Unit. However, the relationship between these sections needs to be better defined.
- The relationship of the proposed §21780 also needs to be defined in the context of Title 27 Financial Assurance Requirements for Corrective Action (§22220 to §22222), which is for "...all known or reasonably foreseeable releases from the disposal facility..."
- The proposed §21780 uses the term "pollution." KCWMD is unclear if this use of "pollution" is consistent with the language referenced by the Central Valley Regional Water Quality Control Board (RWQCB). Many of RWQCB's Waste Discharge Requirements state:

"Pollution" means an alteration of the quality of the waters of the State by waste to a degree which unreasonably affects: (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses [California Water Code, §13050(1)]. Water quality objectives are levels of constituents that are established for the reasonable protection of beneficial uses of waters. Exceedence of water quality objectives, including Maximum Contaminant Levels, constitutes pollution."

The use of the term "pollution" in this section appears to have a broader context than that used by the RWQCB.

- It is unclear whether the submittal of a Corrective Action Plan would be required as a separate, stand alone document or whether these details would be incorporated into sections within the closure plan/postclosure maintenance plan.
- This proposed §21780 adds a new requirement of corrective action for "all known or reasonably foreseeable threats to the public health and safety." KCWMD strongly believes that this addition needs to be justified and further explained. One may interpret that a formal health risk assessment would need to be performed and continually updated in order to comply with this new requirement. This would not be appropriate for all landfills, especially small, closed facilities.
- All of the Waste Discharge Requirements already require detailed annual updates to the closure and groundwater corrective action costs. These cost updates are included in the Annual Monitoring Reports. KCWMD currently forwards these reports to the Regional Water Quality Control Board with correspondence copied to the local enforcement agency.

Mr. Richard Castle
California Integrated Waste Management Board

Page 3

November 27, 2006

It is likely that KCWMD will have further comments concerning the required cost estimates for §21780 once the above clarifications are made.

KCWMD has the following comments concerning §21815:

Currently, KCWMD's projected future closure and postclosure maintenance costs are reviewed and certified for completeness and correctness by professional engineers. These cost estimates are determined using worksheets that are used to project closure costs in today's dollars. Using these same worksheets, postclosure maintenance costs can be projected for any given period to time.

§21815(e): Based on Corrective Action Plans prepared by consultants, KCWMD has formally developed a Financial Assurance Plan based on Pledges of Future Revenue. KCWMD believes that the CIWMB needs to further justify the need to add a 20 percent contingency to these plans and the use of the Caltrans standards. As previously stated, KCWMD is a fiscally responsible public agency not prone to defaulting on long-term financial commitments. We believe the risk of future defaults might be more fairly distributed by developing different standards for public agencies and the private sector.

§21815(f): KCWMD would especially appreciate more clarification concerning what is meant by "the implementation of corrective action remedial action." In particular, "corrective/remedial action" and what constitutes "implementation" needs to be clearly defined. These terms can be interpreted to mean many different things. Closure activities are distinct processes that are often initiated at very clear points in time. However, this is not the case with many corrective actions, especially interim corrective actions that may be implemented for a variety of reasons and at less defined starting points.

For example, KCWMD and our consultants have determined that the operation of landfill gas collection and treatment systems effectively remediate releases of methane and Ridgecrest Sanitary Landfill as one example, KCWMD designed, constructed, and implemented a landfill gas system before any groundwater impacts were detected. This interim corrective action was based on the detections of soil gas in vadose zone monitoring devices. In this instance, interim corrective action was initiated even before the detection of "pollution" triggered an Evaluation Monitoring Program in accordance with §20420(k).

KCWMD and our consultants have also determined that natural attenuation is very effective at reducing the environmental impact of various chemicals that have been released from landfills. Monitored Natural Attenuation (MNA) is a corrective action that is approved by many regulatory agencies, including the USEPA. Natural attenuation is normally occurring even before a release is identified and monitoring of the natural attenuation processes occurs before a Corrective Action Program is officially implemented. KCWMD would currently interpret this requirement of §21815(f) to be triggered when the RWQCB officially approved a Corrective Action Program in a public meeting.

Mr. Richard Castle
California Integrated Waste Management Board

Page 4

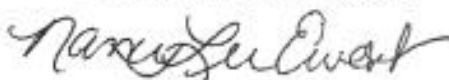
November 27, 2006

§21815(f)(2): This section requires "a revised cost estimate that reflects the expected costs (based on submitted contractor bids or other appropriate documentation)." KCWMD anticipates that some potential costs might not be applicable for a contractor's bid and requests that the term "*or other appropriate documentation*" be clarified for use in this context.

§21820(b)(2): This section requires that "the cost to prepare plans, specifications, bidding documents and other related documents be included." KCWMD recommends that an additional section be added to the cost estimate work sheets which will include allowances for design plans, specifications, bidding documents, etc., and administration cost requirements.

In closing, KCWMD greatly appreciates the opportunity to review and comment on these proposed modifications. We look forward to working closely with the CIWMB and other stakeholders in a combined effort to advance this process as efficiently and fairly as possible.

Sincerely,
DAPHNE B. HARLEY, Director



By: Nancy L. Ewert, P.E.
Engineering Manager
Technical Resources Division

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cc: WMD_IWMB; HCR; RIM; DF; EG